THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION Nos.1156, 3513 and 6119 of 2002

05.8.2005

Between:

W.P.No.1156 of 2002

Vangala Srinivasa Rao, S/o.Sreeramamurthy, Business,

Flat No.301, Chakra Residency, Plot No.346, Sadat Manzil,

Ameerpet, Hyderabad – 500 016.

… Petitioner

W.P.No.3513 of 2002

N.Venugopal, S/o.Madhusudana Rao, Business,

Pushpaleela Nagar, Tangellamudi, Eluru, West Godavari District

And six others

… Petitioners

W.P.No.6119 of 2002

Vangala Srinivasa Rao, S/o.Sreeramamurthy, Business,

Flat No.301, Chakra Residency, Plot No.346, Sadat Manzil,

Ameerpet, Hyderabad – 500 016.

… Petitioner

AND

1. Government of Andhra Pradesh represented by its

Principal Secretary, Animal Husbandry, Dairy Development &

Fisheries Department, Secretariat Buildings, Hyderabad

And another.

… Respondents

(common in all the writ petitions)

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COMMON ORDER:

These three writ petitions can be disposed of by a common order as they arise in a similar background of facts. The Government of Andhra Pradesh decided to dispose of the assets belonging to uneconomical fish seed farms in various places of Andhra Pradesh. Accordingly, orders were issued vide G.O.Ms.No.65 dated 5.5.2001 authorizing the Commissioner of Fisheries to dispose of the properties by auction. The Commissioner, thereafter, issued a tender notification, which was published in the newspapers on 05.10.2001. The petitioners in these writ petitions statedly filed their tenders offering to buy the properties of their choice belonging to fish seed farms. While the process to finalize the tenders and transfer the properties to highest bidders was on, it appears that numerous complaints were made to the Government alleging that there were malpractices in fixation of the market price and finalization of the tenders. Therefore, the Government felt that there is need to cancel the tenders. Accordingly, they issued orders in G.O.Ms.No.42 dated 11.3.2002 cancelling all the tenders called for by the Commissioner. The Government also called for report of the Commissioner of Fisheries.

The Commissioner of Fisheries sent the proposals on 07.12.2002 seeking permission for disposal of seventeen uneconomical fish seed farms. In the meanwhile, the Government in Animal Husbandry, Dairy Development & Fisheries Department issued G.O.Ms.No.53 dated 2.4.2002 in supercession of their earlier orders in G.O.Ms.No.65 dated 5.5.2001 (whereunder the Commissioner of Fisheries was permitted to dispose of fish seed farms by auction) directing the constitution of tenders committee in each district for disposal of fish seed farms. It was, *inter alia*, directed in the said Government order that the Committee should obtain open market price, give wide publicity before conducting the actual auction and then conduct auction either on square yard or acre basis depending on the demand and the potential of the land.

Be that as it is, after receiving proposals of the Commissioner of Fisheries,

the Government again decided to issue orders permitting the Commissioner of Fisheries to dispose of as many as fourteen uneconomical fish seed farms mentioned in the said order. The Government also ordered the Committee consists of Additional Director of Fisheries as Chairman and Executive Engineer and concerned Assistant Director of Fisheries as Members. By issuing orders in G.O.Ms.No.39 dated 04.8.2005, the Government also directed to include jurisdictional Revenue Divisional Officer as Member of the committee.

These writ petitions are filed assailing the orders of the Government in G.O.Ms.No.42 dated 11.3.2002 on various grounds. It is mainly contended that all the petitioners have submitted their tenders quoting higher price than the upset price and/or market price prevailing in the area and therefore, the decision of the Government in canceling the tenders called for pursuant to G.O.Ms.No.65 dated 05.5.2001 is unreasonable. The writ petitions are opposed by the Government.

It is now well settled that there is no law requiring the Government to always procure the services and goods by calling for tenders. However, so as to ensure transparency and subserve public interest, the Courts have held that the disposal of the State property by public auction would ensure public interest and transparency. It is again well settled that whenever tenders are called for procuring services or for getting the works done, it is not incumbent on the State to accept the tenders. It is always open to the State/Government to cancel the tenders without assigning any reason. Such action of the Government must receive the approval of the Court unless it is proved that the State action is vitiated by extraneous considerations or vitiated by *mala fides*. (see **Goldstone Exports Limited, Secunderabad v. Government of A.P.**).

During the course of the arguments, the learned Assistant Government Pleader placed before this Court the entire record and also G.O.Ms.No.34 dated 18.8.2004 whereby and whereunder, as mentioned supra; the Government permitted the Commissioner of Fisheries to dispose of the uneconomical fish seed farms by following the prescribed procedure for auction of the properties. This G.O. must have given quietus to these cases. However, the learned Counsel for the petitioners, Sri B.V.Rama Mohana Rao, submits that when the Government permitted the Commissioner of Fisheries to dispose of the fish seed farms, it only means that the Commissioner should consider the tenders filed by the petitioners in 2001. This Court is not able to accept the submission.

A reading of G.O.Ms.No.34 dated 18.8.2004 belies the submission made by the learned Counsel for the petitioners. Under the said order, while permitting the Commissioner of Fisheries to dispose of the properties, the Government also directed the Commissioner to follow the prescribed procedure for auction of the properties. The procedure for sale of fish seed farms was prescribed in G.O.Ms.No.53 dated 02.4.2002, which superceded the earlier orders in G.O.Ms.No.65 dated 05.5.2001. Therefore the petitioners, who submitted the tenders pursuant to the notification issued subsequent to G.O.Ms.No.65 dated 05.5.2001, cannot contend that their tenders are still valid. For all purposes, the tenders submitted by the petitioners stood cancelled and the Commissioner has to invite

fresh tenders following the procedure laid down in G.O.Ms.No.53 dated 02.4.2002. Paragraph No.2 of G.O.Ms.No.53 reads as under:

> The Committee shall take all measures to ensure proper disposal of the uneconomical Fish seed Farms to obtain maximum possible returns apart from the following:-
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> a. Obtain open market rate, the registered sale value, potential of the land involved before fixing up-set rates.
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> b. Give vide publicity before conducting the actual auction by publishing at least in one State level edition of a prominent daily newspaper apart from one prominent district edition.
>
> c. Conduct the auction either on square yard (or) acre basis depending on the demand and the potential of the land.
>
> d. Take up inspection wherever required and wherever land value is high.
>
> e. Commissioner of Fisheries shall monitor the entire process closely and advice the auction Committee on escalation in the upset price if warranted.

This Court has perused the note file of File No.8971/Fish.II(2)/2001. A reading of paragraphs 117 to 133 of the note file would show that the Government of A.P. never intended to revive the tender process, which stood cancelled by G.O.Ms.No.42 dated 11.3.2002. Indeed while submitting proposals, the Commissioner of Fisheries specifically sought permission for sale of uneconomical fish seed farms by following the procedure as clarified in G.O.Ms.No.53 dated 02.4.2002. The Principal Secretary to Government also put up a note to Hon'ble Minister for Minority Welfare and Fisheries as well as Hon'ble Chief Minister, who endorsed the note put up by the Principal Secretary. Therefore, it is not possible to accept the submission of the learned Counsel for the petitioners.

However, as and when fresh tenders are called for by the Committee, it shall be open to the petitioners to submit their tenders afresh. It is also open to the petitioners to approach the appropriate authority for refund of Earnest Money Deposit (EMD) if any, paid by them.

In the result, for the above reasons, the writ petitions are devoid of merits and are, accordingly, dismissed. There shall be no order as to costs.

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(V.V.S.RAO,J)

05.08.2005

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